

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MIRANDA BUERGEL, et al.,

Plaintiff(s),

v.

PROGRESSIVE DIRECT INSURANCE
COMPANY,

Defendant(s).

CASE NO. C24-0378-KKE

ORDER DENYING DEFENDANT'S
MOTION TO BIFURCATE AND STAY

This suit arises from an insurance dispute between Plaintiffs Miranda and Mason Buergel and Defendant Progressive Direct Insurance Company (“Progressive”), which issued insurance policies to them as well as to the other driver who was involved in a car accident with Miranda Buergel in March 2023. *See* Dkt. No. 1-2. The Buergels’ policy provides underinsured motorist (“UIM”) coverage under certain circumstances, and the Buergels’ complaint alleges that Progressive improperly and unreasonably evaluated their claims for UIM coverage, thereby breaching the contract. *Id.* The complaint also asserts causes of action for violation of the Insurance Fair Conduct Act (“IFCA”), violation of Washington’s Consumer Protection Act (“CPA”), negligence, bad faith, estoppel, and declaratory judgment. *Id.*

Progressive now seeks to bifurcate this action for purposes of discovery and trial, proceeding first with the contract claim for UIM benefits and staying the other claims (“the extracontractual claims”) until the UIM claim is resolved. Dkt. No. 17. The Buergels oppose the

1 motion. Dkt. No. 21. Because the Court finds that Progressive’s concerns regarding the
2 simultaneous litigation of the UIM and extracontractual claims can be addressed via less extreme
3 measures, the Court denies Progressive’s motion to bifurcate and stay.

4 I. ANALYSIS

5 A court may bifurcate trial on claims raised in a single action “[f]or convenience, to avoid
6 prejudice, or to expedite and economize[.]” Fed. R. Civ. P. 42(b). “Bifurcation is particularly
7 appropriate when resolution of a single claim or issue could be dispositive of the entire case.”
8 *Karpenski v. Am. Gen. Life Cos., LLC*, 916 F. Supp. 2d 1188, 1190 (W.D. Wash. 2012) (quoting
9 *Drennan v. Maryland Cas. Co.*, 366 F. Supp. 2d 1002, 1007 (D. Nev. 2005)). A court has broad
10 discretion to determine whether bifurcation is appropriate. *Danjaq LLC v. Sony Corp.*, 263 F.3d
11 942, 961 (9th Cir. 2001). The party seeking bifurcation bears the burden of showing that
12 bifurcation is appropriate. *Karpenski*, 916 F. Supp. 2d at 1190.

13 In this case, Progressive contends that bifurcation is appropriate to avoid the prejudice that
14 would result if it was forced to simultaneously litigate the UIM claim and the extracontractual
15 claims, because “Progressive’s defense of the UIM claims will be prejudiced if it is required to
16 produce its UIM file and internal privileged documents to plaintiff before the UIM claim is
17 resolved.” Dkt. No. 17 at 8 (cleaned up). According to Progressive, “allowing discovery of [its]
18 internal evaluations and strategy prior to resolution of the UIM claims would turn [the] adversarial
19 relationship [between Progressive, as a UIM insurer, and the Buergels] on its head, with prejudicial
20 consequences.” *Id.* (cleaned up). Progressive also contends that bifurcation would promote
21 judicial economy, “as the outcome of the UIM claims may be dispositive of plaintiffs’ bad faith
22 claims.” *Id.* at 10. Progressive emphasizes that bifurcating this action would also allow the parties
23 to avoid the “time-consuming and expensive” “discovery and trial of plaintiffs’ extracontractual
24 claims[.]” which may prove to be unnecessary if Progressive prevails on the UIM claim. *Id.* at 11.

1 The Buergels oppose bifurcation on the grounds that it is the exception, not the rule, and
2 that Progressive has failed to show that there is a good reason to depart from standard trial
3 procedures. *See* Dkt. No. 21 at 4–9. According to the Buergels, there is substantial factual overlap
4 between the UIM claim and the extracontractual claims, such that it would be inefficient to
5 bifurcate. *Id.* at 4–8. The Buergels also cite cases from this district where courts have denied
6 motions to bifurcate contractual claims from extracontractual claims, undercutting Progressive’s
7 suggestion that bifurcation is the preferred or standard method of trying these types of cases. *See,*
8 *e.g., Albers v. USAA Cas. Ins. Co.*, No. 3:22-cv-5489-RJB, 2022 WL 2916571 (W.D. Wash. July
9 25, 2022); *Est. of Hoxsey v. Allstate Prop. & Cas. Ins. Co.*, No. C15-2013-RSM, 2016 WL
10 7724740 (W.D. Wash. May 31, 2016); *Campbell v. Metro. Prop. & Cas. Ins. Co.*, No. C09-
11 1611RAJ, 2010 WL 11684459 (W.D. Wash. July 19, 2010).

12 In arguing that bifurcation is warranted to avoid prejudice, Progressive cites *Fortson-*
13 *Kemmerer v. Allstate Insurance Company* for the proposition that prejudice results when a UIM
14 claim is combined with bad faith claims in a single lawsuit, such that bifurcation is appropriate.
15 *See* Dkt. No. 17 at 6–7. In that case, the Washington State Court of Appeals considered whether
16 an arbitration award of UIM benefits barred a subsequent lawsuit alleging claims for bad faith and
17 violation of IFCA, under the doctrine of res judicata. 393 P.3d 849, 851 (Wash. Ct. App. 2017),
18 *as amended on denial of reconsideration* (June 15, 2017). The *Fortson-Kemmerer* court found
19 that because insurers often successfully seek to bifurcate an action where a UIM claim is joined
20 with bad faith claims, this practice suggested that resolution of the UIM claim would not preclude
21 litigation of the bad faith action under res judicata principles. *Id.* at 859. This decision does not
22 necessarily endorse the practice of bifurcation, or provide any guidance as to when it is appropriate,
23 because that issue was not before the court at that time.

1 *Fortson-Kemmerer* does not necessarily support Progressive’s bid for bifurcation here
2 either, because it appears that there are other, less extreme ways to mitigate the potential prejudice
3 in simultaneously litigating the claims presented in this action. For example, Progressive raises
4 concerns that it may be required to divulge information that would be discoverable as to the
5 extracontractual claims but otherwise privileged for purposes of the UIM claim, but these concerns
6 can be addressed more thoroughly and specifically in the context of a motion to compel or a motion
7 for protective order. *See, e.g., Duett v. State Farm Mut. Auto. Ins. Co.*, No. 2:19-cv-01917-LK,
8 2022 WL 425342, at *3–5 (W.D. Wash. Feb. 11, 2022).

9 Progressive also suggests that bifurcation would promote judicial economy because
10 resolution of the UIM claim may dispose of the extracontractual claims as well. Dkt. No. 17 at
11 10–11. At this early point in the litigation, the Court cannot determine if that result would occur,
12 or if bifurcation would lead to duplicative efforts and a resulting increase in time and expense.
13 *See, e.g., Nielsen v. California Cap. Ins. Co.*, No. 2:22-CV-0177-TOR, 2023 WL 11091814, at *2
14 (E.D. Wash. Sep. 5, 2023) (finding that bifurcation would not necessarily promote efficiency
15 because “Washington courts have consistently recognized that the resolution of a UIM claim is
16 not per se dispositive of a plaintiff’s extracontractual claims”).

17 And to the extent that Progressive suggests that a jury may be confused or prejudiced by
18 evidence relevant to bad faith claims when resolving the Buerghels’ UIM claim (Dkt. No. 17 at 4),
19 such confusion or prejudice can be mitigated via jury instructions and/or a specialized verdict form.
20 *See, e.g., Spicher v. Am. Fam. Mut. Ins. Co., S.I.*, No. C22-1116 MJP, 2023 WL 5228506, at *1
21 (W.D. Wash. Aug. 15, 2023).

22 Because Progressive has not shown that bifurcation is the appropriate vehicle for limiting
23 prejudice and confusion, and promoting judicial economy, the Court will deny its motion to
24 bifurcate and stay.

II. CONCLUSION

For these reasons, the Court DENIES Defendant's motion to bifurcate and stay. Dkt. No. 17.

Dated this 17th day of July, 2024.

A handwritten signature in black ink, reading "Kimberly K. Evanson". The signature is fluid and cursive, with the first name "Kimberly" and last name "Evanson" clearly legible.

Kimberly K. Evanson
United States District Judge